

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

D.T.E. NO. 01-31 – Phase II (Track A)

REQUEST: Department of Telecommunications and Energy Requests to AT&T Communications of New England, Inc.

DATE: August 29, 2002

DTE-ATT 1-1: Please specify and list the retail business services that AT&T considers to be contestable using UNEs and those it doesn't consider to be contestable using UNEs. Also please explain why the retail business services Verizon has listed in Tab C of its June 5, 2002 Compliance Filing are not contestable using the relevant UNEs as listed by Verizon.

Respondent: Eileen Halloran and Deborah Waldbaum

**RESPONSE: The Retail Business Services Listed In Tab C Are Not Contestable Using UNEs (response to second question):**

In its compliance filing, Verizon lists retail services that it offers and then claims to identify for each service the unbundled network elements that can be used to provide the listed service. Since unbundled network elements were defined as the network elements necessary to offer telecommunications service, it comes as no surprise that Verizon's listed services *could technically* be provided using UNEs. However, *Verizon's policies* prevent CLECs, *as an economic and commercial matter*, from using UNEs to provide competing services. Therefore, the services listed in Tab C (with a narrow exception discussed below) are not contestable using UNEs, and that is the issue in this case. *See, Phase I Order*, at 62, n. 39.

"Contestable" has both an economic and a commercial aspect. It requires that a carrier *actually be able to offer* a competing service using UNEs on a commercially feasible basis. AT&T is unable to offer a service that competes with the service listed on Tab C using UNEs on a commercially feasible basis (except in a limited set of circumstances discussed below), for several reasons:

First, Verizon's use and commingling restrictions prevent AT&T from using network elements in the same way that Verizon does to offer the

same service, as explained in the Testimony of Deborah Waldbaum, filed on August 24, 2001 (Exh. ATT-3 in Phase I of this proceeding).<sup>1</sup> Verizon's use and commingling restrictions have the effect of increasing the cost that AT&T, or any potential Verizon competitor, incurs substantially above the cost that Verizon incurs to offer the same service over the same network facilities. This is because Verizon's use and commingling restrictions require CLECs competing with Verizon to order redundant facilities to ensure that local and data traffic do not mix with long distance traffic, or alternatively to purchase special access circuits, on which Verizon permits mixed traffic at a substantially higher price.

Second, Verizon's "no facilities, no build" policy also interferes with using UNEs to contest the services listed in Verizon's Tab C. Frequently, Verizon will unilaterally declare that the network element is not available, based on its own definition of "no facilities," and that it has no obligation to build the network element for AT&T. At the same time, Verizon will offer to build the network element to fill a special access order at inflated access prices.<sup>2</sup> In contrast, Verizon will readily build the network element to fill its own retail order, incurring a significantly lower cost than the inflated access price it charges AT&T for the same network facility. Verizon's forcing of CLECs to pay special access charges for the same facilities that Verizon uses at a substantially lower cost is the very problem that the Department was concerned about in its Phase I Order. The Department found that, when Verizon's retail prices are deregulated, the only way that CLECs will be able to prevent Verizon from raising its retail prices above economically efficient levels is to ensure that CLECs can obtain the wholesale inputs necessary to provide a competing service at TELRIC rates. *See, Phase I Order*, at 61-62.<sup>3</sup> Verizon's overly broad and

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<sup>1</sup> As Ms. Waldbaum explained in her testimony, a copy of which is attached as Attachment A, the second and third "safe harbor" certifications needed to satisfy the use restrictions are inconsistent with the way that networks are configured and the first safe harbor certification is inconsistent with the way that competition works in the market place. More specifically, the second and third options rely on the notion that usage is measured at the customer's premises as well as measured at the interface of each multiplexing function. This assumption, however, is completely contrary to existing measurement techniques and capabilities. The first option requires a customer to certify that the CLEC is its exclusive carrier. This requirement cannot often be met because most business customers choose AT&T local service, or service from another CLEC, in order to take advantage of network diversity. These customers perceive an advantage in having service from *multiple* providers in order to ensure connectivity to the outside world even if there are temporary constraints or problems on any one provider's network. Thus, they typically do not use AT&T (or any CLEC) as their sole local service provider.

<sup>2</sup> Importantly, the piece of the network being ordered by the CLEC is exactly the same. It is simply Verizon policy that determines that it be priced at inflated special access rates, rather than at efficient UNE rates.

<sup>3</sup> The Department stated:

CLECs argue that special access pricing is a barrier to entry for CLECs that want to compete against Verizon's retail private line services because special access services

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unilaterally determined definition of “no facilities” (which then triggers its “no-facilities, no build” policy) prevents CLECs from exerting the necessary downward pressure on Verizon’s prices when CLECs must pay inflated access charges for the special access circuits they must buy each time Verizon asserts its policy. It also has the potential to put CLECs in a price squeeze situation if Verizon were to reduce its retail prices as an anticompetitive move.

Moreover, on top of the economic advantage that Verizon enjoys as a result of forcing its competitors to incur costs that are substantially higher than the costs it incurs to provide the network element, Verizon enjoys a performance advantage as well, because it provides the network element (*e.g.* DS1) necessary for the special access circuit to its own retail operations more quickly and with fewer errors than it provides those circuits to its competitors, as demonstrated in the Department’s investigation of special access provisioning in D.T.E. 01-34. To make matter worse, there is no efficient process in place to convert these special access circuits to UNEs once facilities are built and available. Like the disparity in cost for the network facilities, this disparity in performance also prevents CLECs from exerting downward pressure on Verizon’s retail prices.

There is a third reason that AT&T cannot offer services using UNEs that compete with Verizon’s Tab C services. This third reason relates to Verizon’s cumbersome hot-cut process. As a facilities-based CLEC, AT&T’s goal is to serve as many of its customers as possible with as much of its own network as possible. In the case of small business customers, AT&T’s original plans called for the use of AT&T switching combined with a Verizon unbundled loop. However, after a significant effort, AT&T determined that UNE-L was not commercially viable in large part because of the expensive and inefficient, one-at-a time, hot-cut

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impose higher costs on CLECs than are imposed on Verizon. The Department agrees. CLECs that seek to provide services in competition with Verizon’s retail private line services incur economically-inefficient wholesale costs since the wholesale inputs (special access services) that the CLECs purchase are not priced at incremental cost; rather, these inputs, because of historical universal service policies, are priced well above incremental cost. The record shows that because there is a significant cost differential between Verizon’s wholesale costs and potential entrants’ wholesale costs, entrants may have difficulty exerting downward competitive pressure on Verizon’s retail rates if Verizon raises retail prices above economically efficient levels (see Exh. ATT-2, at 11).

Id., at 62-63 (footnotes omitted). Furthermore, the Department noted in a footnote, that its “analysis applies equally to all Verizon retail services that are not contestable on a UNE basis.” *Id.*, at 62, n. 39.

process. Although Verizon followed the process in accordance with regulatory requirements, the individualized, customer by customer nature of the process made it both so cumbersome that AT&T's customers found it unacceptable and so expensive that it was not economically viable. AT&T had hoped to begin using an alternative method of acquiring customers (*i.e.*, using UNE-P and then converting those customers to UNE-L). The unavailability of a forward-looking, high-volume customer cutover process at forward-looking TELRIC prices, however, has made this plan unworkable.<sup>4</sup> Given these circumstances, AT&T is not able to contest Verizon's small business services in reliance on unbundled loops.<sup>5</sup>

Given the numerous Verizon restrictions, there is only a narrow range of potential competing services that can be offered using UNEs. Only those Verizon services that compete with this narrow range of services can be said to be "contestable" by CLECs relying on UNEs. In the case of the business services offered by AT&T, only those small business services that can be provisioned using UNE-P might fall within the "contestable" definition. Thus, Verizon services that compete with AT&T's "All In One" ("AIO") might fall within the "contestable" category. See table of AT&T business services attached hereto as Attachment B.

Thus, virtually all Verizon services listed on Tab C that are provided in competition with AT&T's business services are not contestable using UNEs. This is because AT&T's business customers, other than those small business customers with relatively basic telecommunication needs (such as those which purchase AIO), generally require a DS1 or above facility. Therefore, unless a particular customer is located directly on AT&T's own network, AT&T must purchase above-cost special access

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<sup>4</sup> The Department has recognized the adverse commercial and economic implications of Verizon's current hot-cut process. In its July 11, 2002, order in D.T.E. 01-20 ("*D.T.E. 01-20 Order*") the Department "direct[ed] Verizon to examine carefully the components of the hot cut process and to develop a less costly alternative for CLECs that Verizon would offer as an alternative to the hot cut process modeled in Verizon's [non-recurring cost model]." *D.T.E. 01-20 Order* at 499. In its motion for partial reconsideration and clarification of that order, AT&T asked the Department to clarify that Verizon's examination include collaborative work with interested CLECs to define and estimate the cost of a forward-looking, high-volume customer cutover process. *AT&T's Motion For Partial Reconsideration And Clarification* (at 23, 29-32), filed on August 14, 2002, in D.T.E. 01-20. *See also, Reply Comments In Support Of AT&T's Motion For Partial Reconsideration And Clarification* (at 15-19), filed on September 6, 2002, in D.T.E. 01-20.

<sup>5</sup> Unless CLECs have the ability to migrate customers to their own networks easily, economically and without risk of service loss (*i.e.*, a process like electronic loop provisioning that would be transparent to the end-use customer), UNE-P will remain essential to compete in this sector of the market. Further, the transition of those customers from UNE-P to UNE-L will continue to be impractical unless a high volume, cost-effective, migration process is made available.

circuits to serve these customers and cannot rely on UNEs.<sup>6</sup> Due to Verizon's use and commingling restrictions, and its "no facilities-no build policy," those DS1 (and above) facilities cannot be purchased as UNEs. A few examples of AT&T business services that cannot be provided using UNEs follow. AT&T's Digital Link service, available to customers of AT&T's long distance network, requires a DS1 circuit and, therefore, cannot be provisioned via UNEs. Similarly, AT&T's Prime Xpress service provides PBX users (with 100+ lines) with T1 access to the public switched network via an AT&T switch. AT&T's Prime Plex service, providing both voice and data transmission on an integrated services digital network ("ISDN"), also requires a DS1 that AT&T must purchase under the special access tariff. PrimePath NBX, another option AT&T offers small businesses, supports a small Centrex service for customers who do not wish to own, lease or maintain a PBX. This service is provisioned as a T1 facility. AT&T's Prime NBX service offers a full-featured Centrex product designed to compete aggressively with PBX systems and serves customers with over 49 lines. A listing and description of these services are set forth in Attachment B, hereto. *Verizon Tab C services that compete with these AT&T services are, therefore, not contestable using UNEs.*

The same is true for all other services provided to businesses that require DS1 or above connectivity. On the data side, private line services, frame relay, and ATM principally support customers with multiple locations who require a DS1 or above to carry the data traffic to those locations. Likewise, IP service, which provides a dedicated internet connection, requires a T1 pipe to the AT&T Point of Presence ("POP") that connects to the public internet. AT&T allows customers to bundle AT&T's services, for example, frame, voice and internet, on a single pipe. Such a bundle requires a T1 to carry the traffic and can be done efficiently only when the traffic for local, long distance and data are mixed to minimize the number of separate T1 facilities that must be used, as explained in Ms. Waldbaum's Phase I testimony (ATT Exh. 3). Thus, no AT&T service to large business customers can rely on UNEs. *Accordingly, no Verizon service listed on Tab C that is provided to large business customers is contestable using UNEs.*

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<sup>6</sup> As described in the testimony of Tony Fea filed in Phase I of this docket (ATT Exh. 6 and 6A), to the extent possible, AT&T provides business services to customers using its own network, or its own network combined with the facilities of a third-party. Only in those situations in which neither is available, does AT&T turn to the ILEC for facilities. Unfortunately, given the constraints on network expansion and the lack of competitive alternatives described by Mr. Fea, AT&T must rely on ILEC facilities for a large portion of its services to business customers.

**No Retail Business Services Provided On DS1 Or Above Circuits Are Contestable Using UNEs (partial response to first question):**

Based on the foregoing, it is evident that AT&T cannot compete on a level playing field with any Verizon business service that is offered to a business customer whose needs include anything beyond a basic POTS/Voice Grade (“VG”)/DS0-level facility. Stated another way, business services provisioned over DS1 and above facilities are not contestable using UNEs. Accordingly, we believe that Verizon should be required to identify which of its services are provided over DS1 or above facilities. Those services are services which AT&T cannot provide using UNEs due to Verizon’s UNE use and commingling restrictions, and its “no-facilities, no-build” policies.

**Retail Business Services Provided On DS0 Circuits Are Contestable Using UNEs As Long As The Department Maintains The Necessary Conditions (partial response to first question):**

Subject to the limitations and uncertainties described above, business services provisioned on POTS/VG/DS0 facilities (such as services similar to AT&T’s AIO service) are potentially contestable using UNEs.<sup>7</sup> Accordingly, Verizon should be required to identify the services listed on Tab C that are never provided to business customers served by a DS1 (or above) circuit and that are only provided on a POTS/VG/DS0 circuit. Only those services are services that are contestable using UNEs (at least as long as CLECs can obtain UNE-P at TELRIC prices).

As we have explained, the availability of UNE-P is a necessary predicate for the contestability of Verizon’s small business services (services provisioned on POTS/VG/DS0 level facilities). If the Department were to grant in this docket Verizon pricing flexibility for POTS/VG/DS0 level services to business on the ground that they are contestable using UNEs, then the Department must ensure that this condition precedent be maintained as well. In other words, the Department must order that Verizon continue to provide unbundled switching, unbundled loops, and UNE-P as an ongoing condition of continued price flexibility. Since Verizon is seeking price flexibility on the ground that its retail business services are contestable using UNEs, if the Department grants that flexibility it must also order that Verizon eliminate the restrictions on

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<sup>7</sup> As we explained above, even Verizon services that compete with AIO may not be contestable using UNEs, because of the absence of a cost effective and efficient mass migration process to convert UNE-P customers to UNE-L. Even with such a process in place, Verizon services that compete with AIO will be contestable with UNEs only to the extent that the Department remains steadfast in requiring Verizon to provide UNE-P at TELRIC prices without line limitations.

UNE availability and use described in this response, and that Verizon continue to make the requisite UNEs available at TELRIC prices.

**Summary:**

1. Verizon business services for which competitors require DS1 and above facilities to compete are not contestable using UNEs due to (1) Verizon's facility use restrictions, (2) Verizon's prohibitions against commingling, and (3) Verizon's "no facilities, no build" policy.

2. Verizon's business services for which competitors require POTS/VG/DS0 facilities to compete are not contestable using UNE-L until a truly seamless and economic customer acquisition process is made available to move the customer from Verizon to the CLEC in the first instance.

3. Because it is not commercially feasible for AT&T to acquire business customers on a UNE-L basis, AT&T acquires them on a UNE-P basis. Verizon's business services for which competitors require POTS/VG/DS0 facilities to compete are, therefore, contestable by CLECs using UNE-P. AT&T will be forced to continue to serve such customers only on a UNE-P basis until Verizon is required to, and does, implement a forward-looking, high-volume customer UNE-P to UNE-L cutover process at efficient, economically viable rates. Such services will remain contestable with UNEs, therefore, only if the Department stands steadfast in requiring Verizon to provide UNE-P, and specifically the switching element in it, at TELRIC prices without limitation. Any attempt by Verizon to increase the price of the switching element above TELRIC would undermine the ability of CLECs to contest services provisioned on DS0 facilities, generally small business services.

4. The numerous Verizon restrictions detailed above have a very real impact on the ability of CLECs to offer competing services at competitive prices. Indeed, in each state in which AT&T considers offering its package of services, it must perform a detailed analysis to figure out for which services it can navigate through and by the many Verizon restrictions. In the interest of simplicity, we show only the major Verizon policy level barriers, not all the operational issues that can derail a business plan. Only in limited circumstances can AT&T use UNEs to compete. We have attached as Attachment C two diagrams to illustrate the decision tree necessary to figure out which services AT&T can provide using UNEs. Where such services cannot be provided using UNEs, we have indicated that the service is "not contestable." As is evident from the diagrams, a large number of conditions must be satisfied before a service can be provided using UNEs. If as few as one of the many conditions is not satisfied, UNEs cannot be used. Thus, with the limited exception detailed above relating to AIO, UNEs cannot be used for services competing with Verizon business services.

5. In its Phase I Order, the Department's conditions for pricing flexibility require that retail services be contestable using UNEs or that the wholesale inputs be available to CLECs on the same terms and conditions as UNEs. The Department's established conditions for pricing flexibility for Verizon's business services, therefore, require: (1) either EEL use and commingling restrictions be removed, or special access circuits be provided on the same terms and conditions as UNEs; (2) special access circuits be provided on the same terms and conditions as UNEs when Verizon asserts its "no facilities, no build" policy that forces CLECs to purchase special access circuits; (3) continued availability of the switching element and UNE-P; and (4) a forward-looking, high-volume customer cutover process at efficient, economically viable rates.

We would be happy to appear and explain to the Department the decision tree outlined in the diagrams attached as Attachment C, or any other aspect of this response.